



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Herndon Car Wash, LLC
FOR
Flagship Car Wash
VPDES Permit No. VAG750190**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Herndon Car Wash, LLC, regarding the Flagship Car Wash facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means the discharge of a pollutant.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Facility" or "Site" means Flagship Car Wash located at 632 Grant Street, Herndon, Virginia 20170, from which discharges of wastewater associated with vehicle washing activity occur.
9. "Herndon Car Wash, LLC" means Herndon Car Wash, LLC, a company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Herndon Car Wash, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" means VPDES General Permit for Vehicle Wash and Laundry Facilities No. VAG75 which was issued under the State Water Control Law and the Regulation on October 16, 2017, and which expires on October 15, 2022. Herndon Car Wash, LLC applied for registration under the Permit and was issued Registration No. VAG750190 on October 16, 2017.
14. "Registration statement" means a registration statement for coverage under a storm water general permit.
15. "Regulation" means "Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash and Laundry Facilities," 9 VAC 25-194-10, *et seq.*

16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.
21. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Herndon Car Wash, LLC owns and operates the Flagship Car Wash facility, located at 632 Grant St, Herndon, Virginia, which discharges wastewater associated with vehicle washing activities.
2. The Permit allows Herndon Car Wash, LLC to discharge wastewater associated with vehicle washing activity from the Facility to an unnamed tributary of Sugarland Run, in strict compliance with the terms and conditions of the Permit.
3. Sugarland Run is located in the Potomac River Basin. Sugarland Run is listed in DEQ's 305(b) report as impaired for aquatic life use based on benthic macroinvertebrate bioassessment.
4. Part II.C.1 of the Permit requires Herndon Car Wash, LLC to submit signed and completed DMRs to NRO by the 10th day of the month following the monitoring period, i.e., January 10th and July 10th of each year.
5. During a DEQ compliance auditing file review, DEQ staff documented the following deficiencies with respect to the monitoring requirements of the Permit:
 - a. The benchmark monitoring DMRs required by Part II.C.1 of the Permit had not been submitted to DEQ on time for the following monitoring periods: 1st semi-annual 2016, 2nd semi-annual 2016, 1st semi-annual 2017, 1st semi-annual 2018, and 2nd semi-annual 2018.
6. The 1st semi-annual 2018 benchmark DMR was received by DEQ on August 24, 2018. The 2nd semi-annual 2018 benchmark DMR was received by DEQ on February 13, 2018.

7. Herndon Car Wash, LLC violated condition Part II.C.1 of the Permit as noted in paragraph C(5) of this Order.
8. NRO issued Warning Letters and a Notice of Violation for the violations noted above as follows: WL No. W2016-08-N-1014, issued August 29, 2016; WL No. W2017-03-N-1001, issued March 1, 2017; WL No. W2017-08-N-1025, issued August 15, 2017; NOV No. W2018-08-N-0008, issued August 15, 2018; and NOV W2019-02-N-0003, issued February 11, 2019.
9. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
10. The Regulation, at 9 VAC 25-194-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
12. The Department has issued coverage under no permits or certificates to Herndon Car Wash, LLC other than under VPDES Permit No. VAG750190.
13. The unnamed tributary of Sugarland Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
14. Based on the results of the DEQ file review, the Board concludes that Herndon Car Wash, LLC has violated the Permit, as described in paragraphs C(1) – C(13), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Herndon Car Wash, LLC, and Herndon Car Wash, LLC agrees to pay a civil charge of \$1,960 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Herndon Car Wash, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with

the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Herndon Car Wash, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Herndon Car Wash, LLC for good cause shown by Herndon Car Wash, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in: NOV No. W2018-08-N-0008, issued August 15, 2018; WL No. W2016-08-N-1014, issued August 29, 2016; WL No. W2017-03-N-1001, issued March 1, 2017; and WL No. W2017-08-N-1025, issued August 15, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Herndon Car Wash, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Herndon Car Wash, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Herndon Car Wash, LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Herndon Car Wash, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Herndon Car Wash, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Herndon Car Wash, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Herndon Car Wash, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
- a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.


Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Herndon Car Wash, LLC. Nevertheless, Herndon Car Wash, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. The Director or his designee terminates the Order after Herndon Car Wash, LLC has completed all of the requirements of the Order;
 - b. Herndon Car Wash, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Herndon Car Wash, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Herndon Car Wash, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Herndon Car Wash, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Herndon Car Wash, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Herndon Car Wash, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Herndon Car Wash, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Herndon Car Wash, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15th day of July, 2019.


Thomas Faha, Regional Director
Department of Environmental Quality

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Herndon Car Wash, LLC voluntarily agrees to the issuance of this Order.

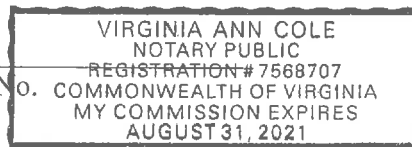
Date: 5-14-19 By: [Signature] M. Mender
(Person) (Title)
Herndon Car Wash, LLC

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 14th day of MAY, 2019, by Guy Paolozzi who is MANAGING MEMBER of Herndon Car Wash, LLC, on behalf of the company.

Virginia Ann Cole
Notary Public

Registration No.



My commission expires: _____

Notary seal: